

JEFFREY WALN, PRESIDENT,	:	Order Docketing Appeal, Vacating
ROSEBUD INDIAN LAND AND	:	Decision and Remanding Matter to
GRAZING ASSOCIATION,	:	the Regional Director
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-4-A
GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	December 20, 2000

Appellant Jeffrey Waln, for himself and as President of the Rosebud Indian Land and Grazing Association, seeks review of a July 28, 2000, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director), increased the minimum acceptable rental rate for the 2001 grazing season on the Rosebud Sioux Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this matter to the Regional Director.

This appeal is related to several other appeals which challenged increased rental rates for the 2000 grazing season on reservations in North and South Dakota. See Cheyenne River Sioux Tribe v. Great Plains Regional Director, 35 IBIA 281 (2000); Lange v. Great Plains Regional Director, 35 IBIA 279 (2000); Fort Berthold Land and Livestock Association v. Great Plains Regional Director, 35 IBIA 266 (2000); and Long Turkey v. Great Plains Regional Director, 35 IBIA 259 (2000).

Although this case has not been briefed, the Board concludes that it is controlled by either Long Turkey or Fort Berthold, both of which were fully briefed. Appellant here also appealed from the setting of grazing rates for the 2000 grazing season. His earlier appeal is addressed in Lange. The Board concludes that no useful purpose would be served by delaying resolution of this appeal for further briefing.

The Regional Director based her decision establishing a new 2001 grazing rental rate on a June 28, 2000, study conducted by David M. Baker, the same certified general appraiser who conducted the studies upon which the Regional Director based her decisions to adjust the rental rates for the 2000 grazing rate season. The Regional Director set the new reservation minimum year-long grazing rate at \$9.00 per AUM (animal unit month).

In distinction to the administrative records in Long Turkey and Fort Berthold, the administrative record here also contains a June 22, 2000, "Market Rental Analysis Summary Report of Grazing Rates On or Near the Rosebud Reservation," prepared by Frederick S. Littau, also a certified general appraiser. This report concluded that the market rent of privately owned grazing lands on or near the Rosebud Reservation as of the date of the report was \$17.00 per AUM.

As was the case with the appeals addressed in Lange and Cheyenne River Sioux Tribe, nothing in the administrative record shows when grazing permits on the Rosebud Reservation expired. If those permits extended through the 2001 grazing season, then this case would be controlled by the Board's decision in Long Turkey, which held that the Regional Director lacks authority to increase rental rates during the term of a five-year grazing permit.

However, if the permits expired prior to the 2001 grazing season, then this case presents nearly the same factual scenario as the appeal in Fort Berthold. It appears likely that the Littau analysis would qualify as "appraisal data" under 25 C.F.R. § 166.13(a) and 55 BIAM (Bureau of Indian Affairs Manual) (Supp. 1, Release 2) § 1.13(B). In other respects, however, the Regional Director's decision suffers the same deficiencies as her decision in Fort Berthold. Therefore, if the permits expired prior to the 2001 grazing season, this appeal would be controlled by the holding in Fort Berthold.

As in Lange and Cheyenne River Sioux Tribe, the lack of evidence showing the date of expiration of the permits on the Rosebud Reservation requires that the Regional Director's decision here be vacated and the matter remanded to her to determine whether Long Turkey or Fort Berthold applies and to take appropriate action.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and the Great Plains Regional Director's July 28, 2000, decision is vacated and this matter is remanded to her for further consideration in accordance with this decision.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge